

REMARKS/ARGUMENTS

This Amendment is in response to the Final Office Action of March 2, 2009, in which the Examiner rejected claims 19, 25-27 and 30-36 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2007/0124795 A1 to McKissick (“McKissick”) in view of U.S. Patent Application Publication No. 2002/0124247 A1 to Houghton (“Houghton”).

By the present Amendment, claims 19 and 25-27 have been amended to correct obvious errors in terminology.

Otherwise, Applicant has not amended the claims, and respectfully requests reconsideration and withdrawal of the rejections in view of the following remarks.

The Examiner now cites **Houghton** (in combination with **McKissick**), stating that **Houghton** discloses both the “survey database” and the “survey server separate from the IM server” that are recited in independent claim 30 (see pages 3 and 4 of the Examiner’s Remarks).

Applicant respectfully submits that **Houghton** and **McKissick**, as combined, fail to teach or suggest several recited features of the claims and, furthermore, are not properly combined under PTO and judicial rules and precedent.

Independent claim 30 recites a communications network that includes, among other things:

“a survey database connected to the IM server for receiving and storing data relating to the displayed IM messages; and

a survey server separate from the IM server for receiving from the survey database data relating to IM messages displayed at the user interface, for aggregating IM content, *including program IDs and keywords present in the displayed IM messages, and personal profile data of the users associated with the displayed IM messages*, and for generating reports so that video programming activity by multiple users may be tracked at the survey server” (emphasis added).

Applicant submits that neither **Houghton** nor **McKissick** teach or suggest a survey server for receiving and aggregating IM content, including program IDs, keywords

present in IM messages, as well as profile data of the users, in order to track video programming activity.

The Examiner cites Fig. 6 and paragraphs 80-81 of **Houghton** for disclosing these features. However, the cited portions of **Houghton** merely refer to a subscriber profile server 6912 and associated database 6914 (in an IM host complex 690) for storing “large amounts of subscriber profile data” and sharing the “subscriber profile data with other services.” There is no disclosure of a “survey database” and there is no disclosure of a “survey server” (i.e., the profile server and the profile database in **Houghton** are not for purposes of surveying data to create reports). Furthermore, the profile server 6912 and profile database 6914 only store and share subscriber profile data. They do not store and aggregate IM content including “program IDs” and “keywords” present in IM messages. In addition, the profile server 6912 and the profile database 6914 do not use program IDs and keywords to generate “reports so that video programming activity by multiple users may be tracked at the survey server,” as recited in claim 30.

Applicant also submits that **Houghton** and **McKissick**, even if assumed (for purposes of argument) that they disclose all of the features of the claims, are not properly combined for teaching the subject matter of the recited claims. As pointed out in the Specification (paragraphs 0058-0060), the present invention permits advantageous use of data generated during an IM session to collect data on how viewers are reacting to a television program, based on the IM messages being posted (and the program identifiers, keywords and profile information associated with the IM messages). In contrast, **Houghton** involves the transmission of an electronic ballot to interactive television viewers, and compiling the responses (votes) in order to determine the relative preferences of users (see paragraphs 0089, 0104 and 0114). **Houghton** does not suggest taking advantage of data already being generated (i.e., data from the generation of IM messages) in conjunction with a broadcast television in order to report on video programming activity. If anything, **Houghton** teaches away from the present invention by teaching the loading and use of separate and dedicated electronic ballots in order to obtain

data (votes) directly from viewers, rather than advantageously deriving that information from already generated IM messages.

Finally, in combining references, the Examiner is required to state a clear articulation of the reason why the claimed invention would have been obvious. **MPEP 2143**. Further, as stated in *KSR Int'l v. Teflex Inc.*, 124 S.Ct. at 1727 (2007), “rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated underpinnings to support the legal conclusion of obviousness.” The basis for combining **Houghton** with **McKissick** stated by the Examiner (page 4 of the Remarks) is motivation to combine the references “due to the fact that the references deal with distributing instant messages in a network and storing user profiles.” Applicant respectfully submits that the Examiner has not met the requirements for making an obviousness rejection, either under the **MPEP** or as required in *KSR*. Among other things, there is no stated basis for why it would be obvious to use the IM messages in either **Houghton** or **McKissick** to generate reports that track video programming activity, as in the present invention.

For these reasons, independent claim 30 is believed allowable over **Houghton** and **McKissick**.

Dependent claims 19, 25-27 and 31-36 each recite limitations in addition to those of claim 30, and are thus believed allowable for at least the same reasons.

CONCLUSION

In view of the foregoing, Applicant believes all claims now pending in this Application are in condition for allowance and an action to that end is respectfully requested.

Appl. No. 10/840,026
Amdt. dated March 16, 2009
Amendment under 37 CFR 1.116 Expedited Procedure
Examining Group 2424

PATENT

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 303-571-4000.

Respectfully submitted,

/Stephen F. Jewett/
Stephen F. Jewett
Reg. No. 27,565

TOWNSEND and TOWNSEND and CREW LLP
Two Embarcadero Center, Eighth Floor
San Francisco, California 94111-3834
Tel: 303-571-4000
Fax: 415-576-0300
SFJ:s5s
61839390 v1